

IN THE HIGH COURT OF SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

In the matter of an Application by Turhane
Doerga and Jinnah Rahman for writs of
Certiorari

Mr. S. Hussein for applicants

Mr. A. Nandalll for respondents

DECISION

This Notice of Motion was filed by the Applicants Turhane Doerga and Jinnah Rahman claiming that the Respondents the Guyana Rice Producers Association acted in breach of the Regulations and that their actions were ultra vires, unconstitutional, unlawful, in excess of or lack of jurisdiction and a breach of natural justice.

On the 30th April 2009, Orders or Rules Nisi of Certiorari were granted in favour of the Applicants calling upon the Respondents to show cause why the list of names constituting the nominations of candidates made for the posts of members of the Committee of the District Associations of No.8 and No.9 districts in Guyana should not be quashed.

The applicants claim that the elections were not held in accordance with the provisions of the Guyana Rice Producers Association Regulations, and that the acts and omissions of the Guyana Rice Producers Association were in excess of or lack of jurisdiction to the

detriment of the industry and rice producers and a denial of the applicant's statutory rights.

The respondents claim that the orders prayed for do not state whether the nisi orders were certiorari, prohibition or mandamus and therefore there is nothing that the court can make absolute.

For the sake of argument I will accept that the orders were granted as orders nisi of certiorari as stated in the body of the order that was granted and entered, and I will therefore deal with application on the basis as to whether the Respondent's actions were in contravention of the Guyana Rice Producers Association Regulations.

However, a nisi order of certiorari can only lie to quash a decision or an act by the respondent and cannot be used to quash a list. Wade on Administrative Law, 7th edition, at page 633 states this quite clearly, thus the order is bad in law.

The respondents also claim that the applicants have no locus standi to bring this application since they have not shown that they are rice farmers or own any rice land, or are manufacturers of rice. The Respondents also claim that in the register kept by the respondents, Jinnah Rahman, one of the applicants is not registered as a rice farmer, and a letter from the Hydronie/Goodhope NDC states that he does not own any land within the said NDC. The other applicant, Turhane Doerga, it is claimed by the respondent, resides

in Georgetown and not in District 8 as alleged. Neither of these allegations was rebutted by the Applicants.

Under the Guyana Rice Producers Association Act, Chapter 69:01, it is stated that “rice producer” has the meaning assigned to it in section 2 of the Rice Marketing Act, Chapter 72:01 (i.e. the Guyana Rice Board Act), which states that “rice producer” means –

- (a) any landlord of rice land within the meaning of these terms as defined by section 2 of the Rice Farmers (Security of Tenure) Act:
- (b) any rice farmer who cultivates his own land or any land let or leased to him or which is otherwise lawfully occupied by him
- (c) any manufacturer

Under the Rice Farmers (Security of Tenure) Act, Chapter 69:02, “Landlord” means any person other than the State or the Guyana Rice Board for the time being entitled to receive the rent or to take possession of any rice lands and includes a sub-landlord, the executors, administrators, assignees, legatee, or trustee in insolvency of a landlord.”

The applicants affidavit in support of their motion state at paragraph 1 “we are Rice Producers” without more. There is no evidence in the affidavit to support their claim as rice Producers, no evidence of any land owned or leased by them for the cultivation of rice, nor any evidence that they are manufacturers.

The Guyana Rice Producers Association Act provides for a Council to be established for the management of the affairs of the Association. By section 7 (1) of the Act “the Council shall, subject to the approval of the Minister, subdivide Guyana into districts for the purposes of this Act, and the Rice Producers in each of the districts so created shall constitute a District Association and be the Members thereof.” By section 7 (4) “a committee shall be elected for each district association by members thereof in every alternate year....”

However, in dealing with the respondents actions as to whether they were in contravention of the Guyana Rice Producers Association Regulations, the pertinent sections of the Regulations are Regulations 3 and 4.

The Guyana Rice Producers Association Regulations made under section 9 of the Act provide for the holding of elections. By Regulation 3 (1) “The Committee of each District Association shall prepare a register of all rice producers who submit claims to be registered as members of the District Association....”

Regulation 3 (2) states that the committee of each district shall take all reasonable steps to ensure the Registration of as many members as possible of each district, and by Regulation 3 (3) a notice shall be published on or before 1st May in each year, in at least one daily newspaper, requiring rice producers to submit a claim to be so registered on or before 31st December. Regulation 3 (5) states that any person claiming to be registered shall produce a certificate that he is a rice producer in that district.

After that is done a committee shall be elected for each District on or before the 30th April in every alternate year, i.e. the year subsequent to the year of registration, (see Regulation 4 (1)). And in every year in which such elections are to be held, a day and place shall be appointed for the nomination of candidates, and a day and polling station for the election of candidates, in each district (see Regulation 4 (2)), and a notice shall be published in a daily newspaper giving 14 days notice, (Reg. 4 (3)).

The applicants claim that these procedures were not followed.

Regulation 3 requires a notice to be published in a daily newspaper requiring every rice producer who desires to be registered as a member of the District Association to deliver a claim of that person's claim to be so registered.

The respondents claim that this regulation has not been strictly complied with since 1989 and that they have employed a different and better system which is that registration is a daily and ongoing exercise, and that they have employed sixteen (16) field officers who are authorised to carry out the registration process.

It seems therefore that a practice has evolved since 1989 whereby instead of the publication of a notice calling on rice farmers to register, that there are persons employed by the respondents who carry out this exercise on a daily basis and therefore they are in

contact with all rice farmers in all the districts. This practice, in my view, does comply with Regulation 3 (2), (supra).

With regard to Regulation 4, the respondents have attached an exhibit showing that a notice was published in the Guyana chronicle dated 4th April 2009 stating the nomination date as 18th April 2009 and election day as the 2nd May 2009 as required by Regulation 4. According to Reg. 4 (3) 14 days notice must be given and this was complied with.

Nominations were held on the 18th April 2009 as stated in the advertisement and after nominations were held, only in district 9 were more than 7 nominations made and so only for district nine were elections necessary, (see Reg. 4 (8) and (10). 15 nominations were received for district 9 including the applicant Jinnah Rahman. Therefore in district 8 there was no need for elections, only for district nine were elections required to be held.

However at the place of nomination for district nine the applicants were not present, although the notice in the Guyana Chronicle stated the boundaries of the district and the venue where the nominations and elections would be held.

Section 4 of the Regulations states that “A committee shall be elected for each District Association in the manner hereinafter provided on or before the 30th April in every alternate year commencing with the year 1960”. Elections were advertised to be held on 2nd May 2009 instead of April 30th 2009

In this case the respondents stated that they scheduled the elections for 2nd May 2009 because 30th April 2009 was a Thursday, a normal working day, and the farmers preferred the elections to be held on a weekend because they will have more time to participate.

Elections were therefore advertised to be held, and elections were held, on the 2nd May 2009. No one objected to this being done. It is only the applicants who are objecting to the elections being held on 2nd May 2009. I can find no merit in this objection since I cannot believe that if, for some reason beyond man's control, the elections cannot be held on the 30th April then this means that there can be no elections. I do not believe that is what the Regulations intended.

I believe the regulations were intended to provide guidelines and rules for the registration of rice producers and the keeping of elections in a timely and purposeful manner, and I do not believe that failure to observe strict timing is fatal for then that would mean that there can be no election, if they are not kept on 30th April of any year in which elections are due. If this were so then elections will have to wait another year to be held on 30th April of the following year, which would defeat the purpose of the Regulations.

I, therefore, agree with counsel for the respondents that Regulation 4 is directory and not mandatory.

Furthermore it seems that everyone else knew about the nominations and elections date, except the applicants who are now seeking to quash the list of names, on the grounds that the Regulations had not been complied with.

In fact the applicants failed to disclose to the court that procedures had been carried out, in keeping with the Regulations, by which everyone had been informed of the nominations and elections. The applicants have not shown in what way they were prevented from registering as everyone else had done. No evidence was given as to what was done by the respondents to prevent the applicants from registering and from taking part in the nominations and elections.

Therefore the Respondents claim that the Applicants have not been frank or candid with the court and that by misrepresenting the facts they misled the court into granting the nisi orders, does, in my view, have some merit, because had the Court been apprised of all the material facts, then the Judge might have come to another decision.

In the locus classicus on the issue of non-disclosure in applications for prerogative writs,

R v General Commrs ex prate Polignac (1917) 1 KB 486, it was held that:

“Where an ex-prate application has been made to this court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, then refuse to proceed any further with the

examination of the merits....But ifthe Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.”

In the circumstances I find the applicant’s case wholly without merit and the respondents having shown cause the orders nisi granted on the 30th April 2009 are hereby discharged.

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Diana F. Insanally
Puisne Judge
Dated this 13th day of May 2010.